PARKER DISTRIBUTORS (SINGAPORE) PTE. LTD.

v.

A/S D/S SVENBORG & D/S AF 1912 A/S

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
LAI KEW CHAI J
AP RAJAH J
[CIVIL APPEAL NO. 107 OF 1980]
28 APRIL 1983

CARRIAGE OF GOODS: *Breach of contract - Whether liability could be limited - Whether s. 4(5), US Carriage of Goods by Sea Act could be invoked - Applicability of principle in "Suisse Atlantique".*

Goods belonging to the appellants were shipped on the respondents' vessel. It was a term of the contract of carriage that there would be "strong room or locker storage". The goods were not so stowed and some of the goods were lost and others damaged, resulting in a loss of $86,086.15 to the appellants. The trial Judge, however, awarded only $7,274.11 and interest on the basis that the respondents were entitled to limit their liability under the provision for limitation as set out in s. 4(5) of the US Carriage of Goods by Sea Act. The appellants appealed.

Held:

[1] The respondents were entitled to rely on the provisions of sub-section (5) of s. 4 of the Act in the circumstances of the case. The question whether the sub-section applied to the breach in the case was a matter of construction of the contract. [*Photo Production Ltd. v. Securicor Transport Ltd.* [1980] 1 All ER 556].

[2] The effect of the breach in the case before the Court could not be equated to those marine deviation cases summarised in *Suisse Atlantique* [1966] 2 WLR 944, 988, 989, as it was a case of merely a breach on stowage and not of deviation.

[Appeal dismissed.]

Cases referred to:
Photo Production Ltd. v. Securicor Transport Ltd. [1980] 1 All ER 556
Suisse Atlantique [1966] 2 WLR 944

For the appellants - P. Selvadurai
For the respondents - G.P. Selvam

JUDGMENT

17 packages of Parker writing instruments belonging to the appellants were shipped from San Francisco, USA to Singapore on the respondents' vessel. It was a term of the contract of carriage that there would be "strong room or locker storage". It was common ground that the goods were not so stowed as the vessel did not have a strong room nor any locker space. It was also admitted that when the goods arrived in Singapore 5 packages were lost and 3 were damaged resulting in a monetary loss of $86,086.15 to the appellants.

At the conclusion of the trial, the learned Judge only awarded the appellants the sum of $7,274.11 and interest thereon on the basis that the respondents were entitled to limit their liability under the provision for limitation of US$500 per package as set out in s. 4(5) of the US Carriage of Goods by Sea Act. Against this decision this appeal was brought.

The sole question for our decision is whether in the circumstances the respondents were entitled to invoke the sub-section.

Counsel for the appellants contended before us that in failing to carry the goods in a strong room or a locker, the respondents were in breach of a term which went to the root of the contract and, being in fundamental breach, were disentitled to rely on the limitation provisions of s. 4(5) of the Act. Since reference has to be made to the sub-section, we set it out below:

> Rights and Immunities
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> Valuation of Cargo-Declaration of Excess Value
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> Section 4...
>
> (5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States or in case of goods not shipped in packages per customary weight unit or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.
>
> ...

We are of the view that the respondents were entitled to rely on the provisions of the sub-section. We would give effect to the words "in any event" in the Statute. The question whether the sub-section applied to the breach in this case is a matter of construction of the contract: *Photo Production Ltd. v. Securicor Transport Ltd.* [1980] 1 All ER 556. The sub-section is clear and unambiguous. If the appellants or their shippers had wanted to avoid the limitation provisions, they or the shippers who had endorsed the bill of lading to the appellants should have declared the nature and value of the goods; in which case, of course, the appellants would have had to pay much higher freight. The risk of loss was apportioned by the parties in the context of the sub-section. In those circumstances, the appropriate insurance coverage could have been arranged by the parties to the carriage.

The appellants in this appeal also seek to equate the effect of the present breach with those of the well-known marine deviation cases which Lord Wilberforce summarised in *Suisse Atlantique* [1966] 2 WLR 944, at 988 & 989 in the following terms:

> ... There is a long line of authority the commencement of which is usually taken from the judgment of Tindal CJ in *Davis v. Garrett,* which shows that a shipowner, who deviates from an agreed voyage, steps out of the contract, so that clauses in the contract (such as exceptions or limitation clauses) which are designed to apply to the contracted voyage are held to have no application to the deviating voyage.

We are unable to accept the equation. These cases do not belong to a special category with special rules. As Lord Wilberforce later said of them in *Photo Production Ltd.* at p. 563:

> I suggested in the *Suisse Atlantique* that these cases can be regarded as proceedings on principles applicable to the law of contract, *viz*. that it is a matter of the parties' intentions whether and to what extent clauses in shipping contracts can be applied after a deviation, that is, a departure from the contractually agreed voyage or adventure.

The case before us is merely a breach on stowage. It is a long way away from the deviation cases. The respondents did attempt to perform the contract of carriage. It was or must have been the intention of the parties to the contract that in these circumstances the respondents could limit their liability to US$500 per package.

For these reasons, we would dismiss the appeal with costs.

Also found at [1983] 1 CLJ 344